



PUBLIC LANDS ACT

BEING CHAPTER P-40, RSA 2000 ("the Act")

ENFORCEMENT ORDER NO. PLA-EO-2014/01-UAR

Mark Warner
Box 156
High Prairie, Alberta T0G 1E0

And

Eldon Warner
Box 413
Rainbow Lake, Alberta T0H 2H0

WHEREAS Mark Warner and Eldon Warner (Messrs. Warner) were the holders of Grazing Lease No. 790176 on public lands located at 22-72-18-W5, Municipal District of Big Lakes, Alberta (the "Lands"). Grazing Lease No. 790176 was issued by Environment and Sustainable Resource Development ("ESRD") and expired on December 31, 2010 (the "Former Lease").

WHEREAS after the expiry of the Former Lease, Messrs. Warner continued to occupy the Lands for the purposes of grazing livestock and were deemed overholding tenants.

WHEREAS ESRD conducted an inspection of the Lands on July 24, 2013 and observed the forested and riparian areas as being in a very unhealthy state, including: changes to vegetation species, presence of noxious weeds, soil compaction, alteration of water flow and impacted water quality in Iroquois Creek. Correspondence was sent to Messrs. Warner on September 12, 2013 regarding the inspection and recommendation for no new lease to be issued.

WHEREAS on October 24, 2013 ESRD sent a letter to Messrs. Warner confirming that the Former Lease would not be renewed; that the cattle and improvements were to be removed in 30 days; and that there was no further right or interest in these Lands and that Messrs. Warner must not make use of them.

WHEREAS ESRD observed livestock and fencing on the Lands on November 25 and December 13, 2013, and on April 28, 2014.

WHEREAS on December 2, 2013 ESRD sent a letter to Messrs. Warner informing them that cattle had been observed on the Lands; that they had no further right or interest in the Lands; and that they may be guilty of an offence.

WHEREAS ESRD met with Messrs. Warner on July 4, 2014 to discuss the continued presence of cattle and fencing on the Lands; and ESRD sent correspondence to Messrs. Warner on July 22, 2014 confirming the amended removal date of July 31, 2014.

WHEREAS ESRD observed livestock and fencing on the Lands on August 13, 2014; September 8 and 9, 2014; and October 16, 2014.

The Legislation

WHEREAS section 20 of the *Act* states that no person shall enter on and occupy any public land for any purpose unless authorized;

WHEREAS section 56(1)(d) of the *Act* states that it is an offence to occupy public land if the person is not the holder of a disposition or an authorization under section 20 and is not otherwise authorized to do so under the *Act* or regulations;

WHEREAS section 54(1) of the *Act* provides that no person shall cause, permit or suffer:

- (a.1) loss or damage to public land,
- (a.2) activities on, or the use of, public land that is likely to result in loss or damage to public land,
- (c) the existence on public land of any condition that may cause loss or damage to the public land,
- (d) the doing of any act on public land that may injuriously affect watershed capacity,
- (e) the disturbance of any public land in any manner that results or is likely to result in injury to the bed or shore of any river, stream, watercourse, lake or other body of water or land in the vicinity of that public land; or
- (f) the creation of any condition on public land which is likely to result in soil erosion;

WHEREAS section 56(1)(g) of the *Act* provides that it is an offence to contravene section 54 of the *Act*;

WHEREAS section 1(l.1)(ii) of the *Act* contemplates that loss or damage to public lands includes the loss of use of any property or resource, and includes the unauthorized alteration of any property or resource;

WHEREAS under section 43 of the Public Lands Administration Regulation (the "Regulation") no person shall enter on or occupy vacant public land that is a bed or shore of a naturally occurring body of water or a naturally occurring river, stream, watercourse, or lake unless one of the enumerated exceptions applies. No exception applies to the ongoing occupation by Messrs. Warner.

WHEREAS Section 174 of the Regulation states that a contravention of section 43 of the Regulation are offences for the purposes of section 56 of the *Act*, and section 56(1)(p) of the *Act* states that it is an offence if a person contravenes a provision of the *Act* or regulations that is prescribed in the regulations;

WHEREAS under the section 11 of the Disposition and Fees Regulation, the holder of an expired, cancelled or abandoned disposition was required to restore and reclaim the land; and under section 21(1)(f) of the Regulation the holder of a formal disposition must, on expiry, cancellation, surrender or abandonment, reclaim the subject land to an equivalent land capability.

WHEREAS section 59.1 of the *Act* provides that where the Director is of the opinion that a person has contravened a section of the *Act* or regulations, they may issue an enforcement order to that person;

WHEREAS under section 1(o.1) of the *Act*, Messrs. Warner are persons responsible.

WHEREAS Faye Hutchings, Compliance Manager, Upper Athabasca Region, has been designated as a Director under the *Public Lands Act* for the purposes of issuing enforcement orders (the "Director");

WHEREAS the Director is of the opinion that Mark Warner and Eldon Warner have contravened sections 20 and 54 of the *Act*, and section 43 of the Regulation in the continued occupation of the Lands, all of which are offences under section 56(1)(d), (g) and (p) of the *Act*;

THEREFORE, I, Faye Hutchings, the Director, pursuant to section 59.1 of the Act, DO HEREBY ORDER THAT:

1. All livestock under the control of Messrs. Warner and occupying the Lands shall be removed within 3 days of receipt of this Order.
2. Messrs. Warner shall prevent livestock under their control from entering the Lands and from occupying the Lands.
3. By June 30, 2015 Messrs Warner shall remove fencing and gate structures from the Lands, including:
 - a. Removal of gates and fencing gaps along the northern boundary;
 - b. Realign fencing along the northern boundary to ensure fencing is not located on the Lands and/or the theoretical road allowance; and
 - c. Remove fencing associated with the expired GRL along the southern boundary of the Lands parallel to the adjacent disposition;
 - d. Remove all fencing along the western boundary of the Lands parallel to Range Road 183, including the parallel north-south fence lines.
4. Within 30 days of completion of the work required by paragraph 2, Messrs Warner shall notify the Director of compliance with paragraph 2.

DATED at the City of Spruce Grove in the Province of Alberta, this 3 day of December 2014.

Original Signed by:
 Faye Hutchings
 Compliance Manager
 Upper Athabasca Region

Notwithstanding the above requirements, the Parties shall obtain all other necessary approvals from any regulatory agency (provincial or federal) in complying with this order.

Take notice that this enforcement order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under this Act or any other legislation. Failure to comply with this order may result in further enforcement proceedings.

Section 211 of the Public Lands Administration Regulation may provide a right of appeal against this decision to the Public Lands Appeal Board. There may be a strict time limit for filing such an appeal. A copy of section 211 is provided below¹.

**For further information, please contact the Board at:
 Public Lands Act Appeals Coordinator
 9th Floor Petroleum Plaza South Tower,
 9915-108 Street,
 Edmonton, Alberta, T5K 2G8;
 Telephone (780) 638-4189**